

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANDREW LOPEZ,

Plaintiff,

vs.

D. PETERSON, *et al.*,

Defendants.

No. 2:98-cv-02111-JKS

ORDER

[Re: Motion at Docket No. 278]

At Docket 278 plaintiff Andrew R. Lopez has filed a request that the court order that the prison officials make copies for filing of certain documents he proposes to file as part of his pretrial documents in accordance with the Court's pretrial order. No opposition to the request has been filed.

Lopez complains that the copies that were returned to him did not contain the exhibits he had attached with the explanation that they do not copy things that come from books because the court has access to the same materials. Apparently, the materials Lopez wishes to have copied were obtained from the prison law library. Lopez contends that the documents "are 'exhibits' for the 'jury' (not just the court)." Lopez also requests that the time for submitting his pretrial documents be extended. At Docket 279 Lopez has filed a paper styled "Notice of Theft of Pretrial Documents and Intentional Obstruction of Court Access by Correctional Staff" making similar allegations and reiterating his request for a court order.

The record shows that on January 31, 2007, Lopez filed his "incomplete" pretrial documents (Docket 280). A review of those pretrial documents reveals that his exhibits identified as P-6, P-10, and P-11 are omitted. The documents identified as Exhibits P-6.1 to 6.12 are all identified as excerpts from the California Administrative Code. Exhibits P-10 and P-11 are identified as excerpts from the California Department of Corrections Operations Manual.

First, the Court observes that while it has ready access to the California Administrative Code electronically, contrary to the position of the prison officials, it does not have ready access to the California Department of Corrections Operations Manual, either electronically or in paper format. Second, while the Court customarily does not permit the introduction of legal materials as exhibits, that is a decision for the Court to make, not a prison official. In addition, such materials may be of assistance to the Court in formulating jury instructions. Moreover, the action taken in this case appears to be contrary to the applicable California Code of Regulations. Section 3162(b), Title 15, California Code of Regulations, provides:

Legal duplicating services for an inmate shall be restricted (provided such restrictions will not interfere with the inmate's access to the courts) when that inmate abuses the service to such an extent that other inmates are deprived of the services or it results in an unnecessary expense to the state. The authority to place such restrictions shall not be delegated to staff below the level of correctional captain. The reasons for any restrictions on the services provided an inmate shall be documented on a CDC Form 128-B (Rev. 4.74), General Chrono, and placed in the inmate's central file .

There is nothing before the court that indicates a legitimate basis exists for restricting legal duplicating services for Mr. Lopez. This may constitute a violation of plaintiff's right to access to the court. *See Phillips v. Hust*, 2007 WL 446953 (9th Cir. February 13, 2007). However, the record in this case also indicates that the parties are to participate in a settlement conference and the date for submitting pretrial documents has been extended to March 7, 2007. Therefore,

IT IS ORDERED THAT the Warden of California State Prison, Corcoran, California will, if this matter is not settled and it becomes necessary, permit Andrew Lopez timely access to copy the legal documents identified as Exhibits P-6, P-10 and P-11; ALTERNATIVELY, counsel for the defendant may provide copies for the use of the Court.

IT IS FURTHER ORDERED THAT counsel for the defendant is directed to ensure that a copy of this order is provided to the Warden, California State Prison, Corcoran, California.

Dated: February 15, 2007

s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge